

ORDINANCE NO. 2026-__
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TOWNSHIP OF BERKELEY HEIGHTS, COUNTY OF UNION, STATE OF NEW JERSEY
AN ORDINANCE ESTABLISHING AN ANNUAL PILOT EDUCATION IMPACT
CALCULATION AND REPORTING REQUIREMENT, REQUIRING AN EDUCATION IMPACT
CONTRIBUTION IN FUTURE RESIDENTIAL PILOT AGREEMENTS AS A CONDITION OF
APPROVAL, AND PROVIDING A LIMITED MUNICIPAL PAYMENT FALLBACK
MECHANISM TO THE FULLEST EXTENT PERMITTED BY LAW

BE IT ORDAINED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, as follows:

SECTION 1. FINDINGS AND PURPOSE.

A. The Township enters into long-term tax exemption agreements and related redevelopment financial agreements as authorized by State law ("PILOT Agreements").

B. PILOT Developments may generate additional enrollment and service impacts for public schools serving the Township, including the Berkeley Heights Public Schools ("BHPS").

C. The Township Council finds that residents benefit from clear, predictable, and transparent accounting of education service impacts associated with school-age children residing in residential PILOT Developments and attending public schools that serve the Township.

D. The Township Council further finds that, for future residential PILOT Agreements and amendments, it is appropriate to negotiate and require, to the fullest extent permitted by law, a separate education-support contribution from redevelopment entities/property owners as part of the approval process, distinct from the statutory PILOT annual service charge.

E. The purpose of this Ordinance is to (i) require annual calculation and reporting of the education impact of residential PILOT Developments, (ii) require an Education Impact Contribution in new or amended residential PILOT Agreements as a condition of approval, and (iii) provide a limited municipal payment fallback mechanism only where a developer/property-owner obligation cannot lawfully be imposed.

F. It is the intent of the Township Council that Education Impact Contributions be borne by redevelopment entities/property owners to the maximum extent practicable so that

the obligation does not increase the local tax levy.

SECTION 2. DEFINITIONS.

For purposes of this Ordinance:

A. "PILOT Agreement" means any long-term tax exemption agreement, redevelopment entity agreement, financial agreement, or similar instrument authorized by State law and approved by the Township.

B. "Residential PILOT Development" means any property subject to a PILOT Agreement that includes residential dwelling units or permits residential occupancy.

C. "School-Age Child" means a person of school age who resides in a dwelling unit within a Residential PILOT Development and attends a public school district or regional school district that serves the Township.

D. "Student Count Date" means October 15 of each year, or if BHPS uses a different official enrollment count date recognized for reporting purposes, then the closest equivalent date used consistently by BHPS from year to year.

E. "Base Per Pupil Amount" means the base per pupil amount determined by the Commissioner of Education for the previous school year pursuant to N.J.S.A. C.18A:7F-49, or any successor provision.

F. "Education Impact Amount" means the annual amount calculated under Section 3 using the School-Age Child Count and the Base Per Pupil Amount.

G. "School-Age Child Count" means the number of School-Age Children residing in a Residential PILOT Development, as of the Student Count Date, who attend a public school district or regional school district that serves the Township.

H. "Education Impact Contribution" means a separate negotiated annual payment obligation required in Covered PILOT Agreements under Section 7, distinct from the statutory annual service charge.

I. "Covered PILOT Agreement" means any new PILOT Agreement, or any amendment, extension, modification, or renewal of an existing PILOT Agreement, approved by the Township on or after the effective date of this Ordinance, where the development includes residential units or permits residential occupancy.

J. "Township Fallback Payment" means the Township-to-BHPS payment described in Section 8, applicable only to the extent a developer/property-owner Education Impact Contribution cannot lawfully be imposed for a given year or agreement.

SECTION 3. ANNUAL CALCULATION OF EDUCATION IMPACT AMOUNT.

A. Calculation Date. No later than December 1 of each year, the Township Chief Financial Officer ("CFO") shall calculate the Education Impact Amount for the upcoming calendar year based on (i) the School-Age Child Count and (ii) the Base Per Pupil

Amount.

B. School-Age Child Count Certification. No later than November 15 of each year, BHPS administration shall provide the Township CFO a written certification of the number of School-Age Children residing in each Residential PILOT Development as of the Student Count Date, and shall identify, in the aggregate, any School-Age Children attending a regional district serving the Township if applicable.

C. Formula. The Education Impact Amount shall be calculated as follows:

Education Impact Amount = (Total School-Age Child Count residing in Residential PILOT Developments) × (Base Per Pupil Amount)

D. Development-Level Detail. The CFO shall calculate and retain a development-by-development breakout (school-age child counts and dollar impact) for transparency and reporting.

SECTION 4. TRANSPARENCY; PUBLIC REPORTING; RECORDS.

A. Annual Report. By January 31 of each year, the Township shall publish on its website an annual report including:

1. Total School-Age Child Count residing in Residential PILOT Developments and development-level counts;
2. The Base Per Pupil Amount used (with school year reference);
3. The calculated Education Impact Amount and the development-level breakout;
4. For each Residential PILOT Development, whether an Education Impact Contribution was required and paid, and the amount paid and date(s) paid;
5. Any Township Fallback Payment appropriated and paid, including amounts and dates; and
6. Any explanation of lawful limitations relied upon, if applicable.

B. Records. The Township Clerk shall retain BHPS certifications, CFO calculation worksheets, reports, proof of payments, and any related correspondence as public records in accordance with applicable retention requirements.

SECTION 5. COOPERATION FOR COUNTING AND NOTICE.

A. Township/BHPS Notice. The Township Administrator, in consultation with BHPS administration and the Township Attorney, shall prepare a standard occupant notice for Residential PILOT Developments advising that public school enrollment requires registration and that residency may be counted for purposes of the Township's annual Education Impact Amount calculation.

B. Distribution. For Covered PILOT Agreements, the developer/redevelopment entity/property owner or property manager, as applicable, shall distribute the occupant

notice to new occupants and annually thereafter in a manner approved by the Township Administrator, subject to applicable privacy laws.

C. Reasonable Data Cooperation. For Covered PILOT Agreements, the developer/redevelopment entity/property owner or property manager shall reasonably cooperate with Township and BHPS requests necessary to confirm unit occupancy and to facilitate accurate counting, provided no student educational records are disclosed and any data sharing complies with applicable law.

SECTION 6. PILOT AGREEMENT ACKNOWLEDGMENT RIDER REQUIRED.

A. Standard Rider. The Township Attorney and Township Clerk shall prepare a standard rider/exhibit to be included in all Covered PILOT Agreements, including the cooperation and notice obligations in Section 5 and the Education Impact Contribution requirement in Section 7.

B. Packet Disclosure. Ordinance packets, RFPs, and draft agreement materials for Covered PILOT Agreements shall state that this Ordinance applies to residential components and requires an Education Impact Contribution and annual reporting.

SECTION 7. EDUCATION IMPACT CONTRIBUTION REQUIRED IN COVERED PILOT AGREEMENTS.

A. Condition of Approval. No ordinance approving a Covered PILOT Agreement shall be introduced for first reading unless the proposed agreement includes an Education Impact Contribution provision consistent with this Section, as approved by the Township Attorney.

B. Separate and Distinct Obligation. The Education Impact Contribution shall be a negotiated contractual obligation of the redevelopment entity/property owner (or other responsible party identified in the agreement), separate and distinct from the statutory PILOT annual service charge required under State law, and shall not be characterized as a reallocation, earmark, or diversion of the annual service charge.

C. Residential Formula (State-Consistent). For a Residential PILOT Development, the annual Education Impact Contribution shall equal:

(School-Age Child Count residing in that Residential PILOT Development) × (Base Per Pupil Amount for the previous school year).

D. Caps, Phase-In, and Credits (Optional Deal Terms; Must Be Disclosed). A Covered PILOT Agreement may include a reasonable cap, phase-in schedule, and/or credits for directly funded school-impact improvements (e.g., safe routes, sidewalks, traffic controls) as approved by the Township Council upon recommendation of the Township Attorney and CFO, provided that any such terms are expressly stated in the agreement and disclosed in the Township's annual report under Section 4.

E. Timing. The agreement shall require payment of the Education Impact Contribution on a schedule aligned to the Township's annual reporting cycle, such as two installments due on or about March 1 and September 1, or another schedule approved by the Township Council.

F. Recipient. The Education Impact Contribution shall be paid to Berkeley Heights Public Schools or to another lawful education-support recipient/mechanism approved by the Township Attorney.

G. Special Projects Alternative (Optional; Must Be Valued and Disclosed). In lieu of making the payment described in subsection (C), a Covered PILOT Agreement may include one or more special projects benefiting BHPS with an assigned dollar value, delivery timelines, and enforcement terms, as approved by the Township Council and Township Attorney, provided that the value and status are disclosed in the annual report under Section 4.

SECTION 8. LIMITED TOWNSHIP FALLBACK PAYMENT MECHANISM (ONLY WHERE CONTRIBUTION CANNOT BE IMPOSED).

A. Applicability. The Township Fallback Payment applies only to the extent the Township Attorney determines that an Education Impact Contribution cannot lawfully be imposed for a given Residential PILOT Development or for a given year (including due to grandfathered agreements that cannot be amended without mutual consent).

B. Required Budget Line Item. The Township shall include a distinct line item appropriation titled "BHPS PILOT Education Impact Fallback Payment" (or substantially similar title) in the municipal budget process.

C. Amount. The Township Fallback Payment amount shall be the portion of the Education Impact Amount attributable to Residential PILOT Developments for which an Education Impact Contribution cannot lawfully be imposed under subsection (A), as calculated by the CFO and certified by the Township Attorney.

D. Payment Schedule. Upon adoption of the municipal budget containing the appropriation, the Township shall pay BHPS the Township Fallback Payment in two equal installments on or about March 1 and September 1 of that year, or as otherwise required by lawful disbursement procedures.

E. Fullest Extent Permitted by Law. The Township Council shall appropriate and pay the Township Fallback Payment to the fullest extent permitted by law. If any binding appropriation requirement is deemed unenforceable, the Township shall implement the closest lawful alternative that achieves the intent of making the payment, and shall publicly disclose any lawful limitation relied upon in the annual report.

SECTION 9. NO PRIVATE RIGHT OF ACTION.

This Ordinance is intended to establish Township duties and transparency requirements and shall not be construed to create a private right of action for money damages.

SECTION 10. SEVERABILITY; CLOSEST LAWFUL ALTERNATIVE.

If any section, subsection, sentence, clause, or phrase of this Ordinance is held invalid or unenforceable, the remaining portions shall not be affected. The Township shall implement the remaining portions and, where a mechanism is invalidated, shall use the closest lawful alternative mechanism that most closely achieves the intent of ensuring education-impact support associated with residential PILOT Developments.

SECTION 11. EFFECTIVE DATE.

This Ordinance shall take effect upon final passage and publication as required by law.